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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re DYNAMIC RANDOM ACCESS
 MEMORY (DRAM) ANTITRUST
 LITIGATION

Case No. M-02-1486-PJH
 MDL No. 1486

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS
 and

*State of California et al. v. Infineon
 Technologies AG, et al.*

*State of New York v. Micron Technology Inc., et
 al.*

*State of California et al. v. Samsung Electronics
 Co., Ltd., et al.*

*State of California et al. v. Winbond Electronics
 Co.*

Petro Computer Systems, Inc. v. Hitachi, Ltd.

*Petro Computer Systems, Inc. v. Mitsubishi
 Electric Corporation, et. al.*

**[PROPOSED] ORDER GRANTING
 FINAL APPROVAL OF SETTLEMENTS,
 PLANS OF DISTRIBUTION AND
 CLAIMS PROTOCOLS, CERTIFYING
 SETTLEMENT CLASSES, FINALLY
 ADOPTING SPECIAL MASTER'S
 REPORT AND RECOMMENDATIONS,
 PARTS I AND II; FINAL JUDGMENT OF
 DISMISSAL WITH PREJUDICE**

Case No. C 06-4333 PJH ✓

Case No. C 06-6436 PJH c

Case No. C 07-1347 PJH c

Case No. C 07-2589 PJH c

Case No. C 12-5213 PJH c

Case No. C 12-5214 PJH c

[PROPOSED] ORDER RE FINAL APPROVAL OF CLASS ACTION SETTLEMENTS, PLANS OF DISTRIBUTION,
 ADOPTION OF SPECIAL MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

1 *Petro Computer Systems, Inc. v. Toshiba*
2 *Corporation, et. al.*

3 *State of California et al., v. Toshiba*
4 *Corporation et al.,*

5 *State of California et al., v. Mitsubishi Electric*
6 *Corporation, et. al.*

7 *State of California et al., v. Hitachi, Ltd.*

Case No. C 12-5215 PJH ^c

Case No. C 12-5230 PJH ^c

Case No. C 12-5229 PJH ^c

Case No. C 12-5231 PJH ^c

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[PROPOSED] ORDER RE FINAL APPROVAL OF CLASS ACTION SETTLEMENTS, PLANS OF DISTRIBUTION,
ADOPTION OF SPECIAL MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

The Indirect Purchaser Plaintiffs and the Attorneys General have jointly moved the Court to:

(1) Grant final approval to settlements with defendants Samsung, Winbond, Infineon, Elpida, NEC, Micron, Mosel, Hynix, Nanya, Toshiba, Hitachi, and Mitsubishi, as those entities are defined in their respective Settlement Agreements (collectively, the “Settlements” and the “Settling Defendants”) and certify the settlement classes defined in the Settlement Agreements pursuant to Rule 23, Federal Rules of Civil Procedure;

(2) Grant final approval to the plans for distributing the settlement proceeds to members of the Indirect Purchaser Settlement Class and to members of the Government Purchaser Settlement Classes (“Plans of Distribution”) that are recommended in the “Report and Recommendations of Special Master, Part I: Settlement Class Certifications And Plans Of Allocation And Distribution Of The Settlement Proceeds To The Settlement Classes” (“Report, Part I”), filed January 8, 2013 (Dkt. No. 2132) at ¶¶ 24, and 293 – 363;

(3) Grant final approval to the protocols for claims processing for the Indirect Purchaser Settlement Class that were recommended in the “Report and Recommendations of Special Master, Part II: Notice Programs, Claim Procedures and Processing” (“Report, Part II”), filed June 24, 2013 (Dkt. No. 2147) at ¶¶ 29 – 38;

(4) Adopt, as a final matter, the findings of fact, conclusions of law and recommendations contained in the Special Master’s Report, Part I, and in the Special Master’s Report, Part II, as to the process employed in arriving at and fixing the protocols for claims processing for the Indirect Purchaser Settlement Class pursuant to Rule 53(f)(2), Federal Rules of Civil Procedure.

A hearing was held on June 25, 2014, and these matters having come on before the Court to determine whether to finally approve the Settlements, the plans of distribution and the claims protocols, and whether to adopt as a final matter the findings, conclusions and recommendations in the Report, Parts I and II. Six (6) objections were filed on behalf of a total of thirteen (13) members of the Indirect Purchaser Settlement Class. These objections were directed to the certification of the

1 Indirect Purchaser Settlement Class, the form of notice to that Class, and the plan of distribution
 2 proposed for that Class. The substance of these objections falls broadly into the following
 3 categories: (1) that the Indirect Purchaser Settlement Class fails to satisfy the requirements of Rule
 4 23(b)(3) of the Federal Rules of Civil Procedure because it includes residents of states whose courts
 5 construe their antitrust laws in accordance with *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)
 6 (“non-repealer states”); (2) that the proposed plan of distribution for the Indirect Purchaser
 7 Settlement Class is unfair and unreasonable because it provides for the payment of claims from
 8 residents of non-repealer states *pro rata* with the claims of residents of states whose courts or
 9 legislatures have determined that their antitrust laws are not constrained by *Illinois Brick* (“repealer
 10 states”); (3) that the proposed plan of distribution for the Indirect Purchaser Settlement Class is
 11 unfair and unreasonable because it contains contingent provisions that under certain circumstances
 12 would trigger the *cy pres* distribution of a portion of the settlement proceeds; (4) that neither the
 13 settlements nor the plan of distribution can be approved until the contingent *cy pres* recipients are
 14 determined; and (5) that the notice given to the Indirect Purchaser Settlement Class was insufficient
 15 because it did not provide putative class members with information from which to compute the
 16 amount of money that they will receive from the settlement funds. No objections were raised to the
 17 certification of the Government Purchaser Settlement Classes, to the plans of distribution
 18 recommended by the Special Master for those classes, or to the claims protocols for the Indirect
 19 Purchaser Settlement Class. No objectors appeared at the hearing.

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 21 The Court having carefully reviewed the Settlement Agreements, and Plaintiffs’ motions for
 22 final approval of the settlements, approval of the plans of distribution and claims processing
 23 protocols and the adoption of the Report Parts I and II (Dkt. Nos. 2213 and 2215), the objections
 24 raised to the approval of the Settlements, certification of the Indirect Purchaser Settlement Class, the
 25 plan of distribution recommended by the Special Master for the Indirect Purchaser Settlement Class,
 26 and to the class notice (Dkt. Nos. 2198, 2199, 2200, 2201, 2202, 2204, 2225, 2226 and 2228), and
 27 the Plaintiffs’ responses to these objections in their motions for final approval and for adoption of

the plans of distribution and claims protocols, the arguments of counsel, and the records on file in this action, and having addressed these objections and other issues at the hearing, the Court has rejected these objections and determined that: (1) the Settlements as set forth in the Settlement Agreements with the Settling Defendants should be given final approval; (2) the plans of distribution for the Indirect Purchaser Settlement Class and the Government Purchaser Settlement Classes, as set out in the Report, Part I, should be approved and adopted by this Court; (3) the claims processing protocols for the Indirect Purchaser Settlement Class, as set out in the Report, Part II, should be approved and adopted by this Court; (4) Plaintiffs' motion for final adoption of the findings of fact, conclusions of law and recommendations set out in the Report, Parts I and II should be granted; and (5) there is no just reason for delay in the entry of Judgment, which shall constitute a final adjudication of this case on the merits as to the Settling Defendants. Accordingly, good cause appearing therefor, it is:

ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter of this litigation, and all actions within this litigation, and over the parties to the Settlement Agreements, including all members of the Indirect Purchaser Settlement Class, the Government Purchaser Settlement Classes, the Plaintiffs, and the Settling Defendants, and any person or entity claiming by, for, or through the Settling Parties with regard the Released Claims, as defined in the Settlement Agreements.

2. The following classes are certified for settlement purposes only, pursuant to Rule 23, Federal Rules of Civil Procedure, bearing in mind that this litigation presented a series of difficult factual, legal and procedural issues, many of which remained undecided at the time of the Settlements. The Settlements resolve the litigation to give certainty to the parties, and nothing in this Order, other than the findings and conclusions of the Court as expressly set forth in this Order, resolves those issues:

The Indirect Purchaser Settlement Class: All natural persons and non-governmental entities, who, at any time during the period from January 1, 1998 through December 31, 2002, purchased dynamic random access memory ("DRAM") devices and

components, including all products containing DRAM, anywhere in the United States indirectly from the defendants, their parents, subsidiaries and affiliates. Excluded from this definition are defendants and their parents, subsidiaries and affiliates, legal representatives, successors, assigns or co-conspirators; all governmental entities; any judicial officer presiding over the settled litigation and the members of his/her immediate family and judicial staff.

The Samsung/Winbond Government Purchaser Settlement Class:
All state government entities, all political subdivisions and all public colleges and universities in Class States Alaska, Delaware, Ohio and Pennsylvania, all political subdivisions in New Mexico and all political subdivisions, the University of California and the State Bar of California in Class State California who purchased DRAM or DRAM-containing products directly or indirectly from Samsung and Winbond between January 1, 1998 and December 31, 2002;

The Multi-Defendant Government Purchaser Settlement Class:
All political subdivisions in Class State New Mexico and all political subdivisions, the University of California and the State Bar of California in Class State California who purchased DRAM or DRAM-containing products directly or indirectly from Infineon, Elpida, NEC, Mosel, Micron, Hynix, Nanya, Mitsubishi, Toshiba and Hitachi between January 1, 1998 and December 31, 2002.

3. Within the context of and for the purposes of the approval of the Settlements, the Court finds that the requirements of Rule 23(a), Federal Rules of Civil of Procedure, have been satisfied by each of the above-described classes in that: (a) there are numerous putative class members, making joinder of all class members impracticable; (b) there are questions of fact and law that are common to all members of the class; (c) the claims of the named plaintiffs who are class representatives are typical of the claims of the absent members of the class; (d) the named plaintiffs who are class representatives have and will fairly and adequately protect the interests of the absent members of the class; and (e) the counsel for the class are skilled and experienced litigators who have and will adequately advance the interests of the class. The Court adopts as a final matter the findings of fact and conclusions of law set forth in the Report, Part I, as to satisfaction of the requirements of Rule 23(a) by each of the above-described classes, as if fully set forth herein.

4. Within the context of and for the purposes of the approval of the Settlements, the Court further finds that the requirements of Rule 23(b)(2) and (b)(3), Federal Rules of Civil

1 Procedure, have been satisfied for settlement purposes by each of the above-described classes in
2 that: (a) the defendants have acted on grounds that apply generally to the class; (b) questions of fact
3 and law common to the class members predominate over any questions affecting only the claims of
4 individual class members; and (c) a class action is superior to other available methods for the fair
5 and efficient adjudication of this controversy. The Court adopts as a final matter the findings of fact
6 and conclusions of law set forth in the Report, Part I, as to satisfaction of the requirements of Rule
7 23(b)(2) and (b)(3) by each of the above-described classes, as if fully set forth herein.

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9 5. The Court hereby appoints as a final matter the plaintiffs named in the *Petro*
10 Complaint as the representatives of the Indirect Purchaser Settlement Class, and Indirect Purchasers'
11 Co-Lead Counsel, Cooper & Kirkham, Gustafson Gluek, The Mogin Law Firm and Straus & Boies,
12 as counsel for the class. The Court adopts as a final matter the findings of fact and conclusions of
13 law set forth in the Report, Part I, as to the qualification of these firms to serve as class counsel, as if
14 fully set forth herein.

15 6. The Court hereby appoints as a final matter as the representatives of the
16 Samsung/Winbond Government Purchaser Settlement Class, the States of Alaska, Delaware, Ohio
17 and Pennsylvania, and for California class members, the City and County of San Francisco, Santa
18 Clara County and the Los Angeles Unified School District, and for New Mexico class members, the
19 Rio Rancho Public Schools. The Court further appoints as a final matter as the representatives of
20 the Multi-Defendant Government Purchaser Settlement Class, for California class members, the City
21 and County of San Francisco, Santa Clara County and the Los Angeles Unified School District, and
22 for New Mexico class members, the Rio Rancho Public Schools. The Court appoints as a final
23 matter Emilio E. Varanini, Deputy Attorney General of the California Attorney General's Office, as
24 counsel for each of the government purchaser classes. The Court adopts as a final matter the
25 findings of fact and conclusions of law set forth in the Report, Part I, as to the qualification of Mr.
26 Varanini to serve as class counsel, as if fully set forth herein.

1 7. The “Indirect Purchaser Plaintiffs’ and Attorneys General’s Notice of Exclusions,”
2 filed May 15, 2014 (Dkt. No. 2205) set out the names of five (5) individuals who elected to exclude
3 themselves from the Indirect Purchaser Plaintiff Settlement Class and the *parens patriae* actions,
4 and the two (2) Oregon governmental entities who elected to exclude themselves pursuant to the
5 Oregon notice provisions. Such persons/entities are not included in or bound by this Final
6 Judgment. Such persons/entities are not entitled to any recovery from the settlement proceeds
7 obtained through the Settlements.

8 8. Prior to receipt of these requests for exclusion, Notice of this litigation and the
9 proposed settlements was given to putative members of the Indirect Purchaser Settlement Class,
10 including those covered by the *parens patriae* actions, the Government Purchaser Settlement
11 Classes, and by the Oregon Attorney General pursuant to the notice requirements of OR. REV. STAT.
12 §646.775 (2)(a), all in accordance with this Court’s “Order Granting Preliminary Approval of Joint
13 Settlements, Conditionally Certifying Settlement Classes, Adopting Special Master’s Report and
14 Recommendations, Parts I & II, Disseminating Notice To the Settlement Classes, and Scheduling
15 Fairness Hearing,” filed January 17, 2014 (Dkt. No. 2174), (“Preliminary Approval Order”). The
16 Court confirms its prior findings that the Notices given pursuant to the Preliminary Approval Order
17 were the best notice practicable under the circumstances. The Court further confirms its prior
18 findings that said notices provided due, adequate, and sufficient notice of these proceedings and of
19 the matters set forth herein, including the proposed settlements set forth in the Settlement
20 Agreements, and that said notice fully satisfied the requirements of due process, the Federal Rules of
21 Civil Procedure, and all applicable state laws.

22 9. The Court finds that the Settling Defendants have provided a notice of proposed
23 settlement that complies with the requirements of the Class Action Fairness Act, 28 U.S.C. §§ 1711-
24 15.

25 10. The Court hereby finally approves and confirms the Settlements set forth in the
26 Settlement Agreements with the Settling Defendants and finds that said settlements are, in all
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1 respects, fair, reasonable, and adequate pursuant to Rule 23(e), Federal Rules of Civil Procedure,
2 and all applicable state laws.

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4 11. The Court hereby dismisses on the merits and with prejudice the individual, *parens*
5 *patriae*, governmental entity, and class claims asserted by the Plaintiffs against the Settling
6 Defendants, with all parties to bear their own costs and attorneys' fees except as provided for in the
7 Agreements and by order of this Court. All parties will seek the dismissal of any state court actions
8 covered by the terms and provisions of the Settlement Agreements.

9 12. As provided in each of the Settlement Agreements, the Settling Defendants and all
10 persons and entities who are defined as Releasees are hereby and forever released and discharged
11 with respect to any and all claims or causes of action which the Plaintiffs and members of the
12 certified Settlement Classes and any person or entity defined in the Settlement Agreements as
13 Releasers had or have arising out of or related in any way to any of the Released Claims as defined
14 in the Settlement Agreements.

15 13. Private claims against the Settling Defendants and Releasees are released by two
16 Settling Plaintiff groups: the class of Indirect Purchasers as certified above and the Attorneys
17 General through their *parens patriae* claims. The releases are as follow:

18 The Settling Defendants and Releasees, as defined above, shall be completely
19 released, acquitted, and forever discharged from any and all claims, demands,
20 actions, suits, causes of action, whether class, individual, or otherwise in nature
21 (whether or not any Settling Plaintiff has objected to the settlement or makes a
22 claim upon or participates in the Settlement Fund), whether directly,
23 representatively, derivatively or in any other capacity that Releasers, as defined
24 above, or each of them, ever had, now has, or hereafter can, shall, or may have on
25 account of, related to, or in any way arising out of, any and all known and
26 unknown, foreseen and unforeseen, suspected or unsuspected injuries, damages,
27 and the consequences thereof in any way arising out of or relating in any way to
28 any act or omission of the Settling Defendants Releasees (or any of them)
concerning the pricing, production, development, or sale of DRAM products or
products containing DRAM up to December 31, 2002, based on the conduct
alleged and causes of action asserted or that could have been asserted, in
complaints filed in the Actions by the Settling Plaintiffs, or in any similar action
filed in any federal or state court, including, without limitation, any claims arising

1 under any federal or state antitrust, unjust enrichment, unfair competition, trade
 2 practice statutory or common law, and consumer protection law (to the extent that
 3 a consumer protection claim would be based on allegations of an antitrust or
 4 unfair competition violation) (the "Released Claims"). Releasors shall not, after
 5 the date of this Agreement, seek to establish liability against any Settling
 6 Defendants Releasee based, in whole or in part, upon any of the Released Claims,
 7 or conduct at issue in the Released Claims. The Settling Parties contemplate and
 8 agree that the Settlement Agreements may be pleaded as a bar to a lawsuit, and an
 9 injunction may be obtained, preventing any action from being initiated or
 10 maintained in any case sought to be prosecuted on behalf of indirect DRAM
 11 purchasers with respect to the claims released in this paragraph. This release,
 12 discharge, and covenant not to sue does not include claims by any of the Settling
 13 Plaintiffs other than the claims set forth therein and does not include other claims,
 14 such as those solely arising out of product liability or warranty claims in the
 15 ordinary course of business.

16 Because both Settling Plaintiff groups are giving complete releases of the Released Claims, this
 17 Court need not determine and has not determined which of the two Settling Plaintiff groups is
 18 releasing or may release any of the Released Claims.

19 14. The Settling Defendants are enjoined for a period of three years from the execution
 20 of their various Settlement Agreements from engaging in certain conduct specified therein, but
 21 generally falling into the broad categories of price fixing, market allocation and bid rigging, with
 22 respect to the sale of any DRAM product for delivery in the United States, which constitutes
 23 horizontal conduct that are *per se* violations of Section 1 of the Sherman Act, including,
 24 participating in meetings, conversations, and communications with each other and other DRAM
 25 manufacturers (other than among affiliated entities) in the United States and elsewhere to discuss the
 26 prices of DRAM to be sold to original equipment manufacturers of personal computers and servers
 27 ("OEM customers") and exchanging information on sales of DRAM to OEM customers, for the
 28 purpose of monitoring and enforcing adherence to agreed-upon prices. The Settling Defendants are
 also required pursuant to the terms of their various Settlement Agreements to establish, within
 ninety days of final approval, if not already established, and maintain for a period of three years
 thereafter, a program to provide relevant antitrust compliance education to the Settling Defendants'
 officers and employees with responsibility for pricing and sales of DRAM in and to the United

1 States regarding the legal standards imposed by federal and state antitrust laws, and to certify to a
2 designated representative of the plaintiffs by appropriate letter that it is fully compliant with the
3 provisions of their respective Settlement Agreements.

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5 15. The Court hereby adopts and fixes the Plans for Distribution for the Indirect
6 Purchaser Settlement Class and the Government Purchaser Settlement Classes that are
7 recommended by the Special Master in the Report, Part I, at ¶¶ 24, and 293 – 363. The Court also
8 adopts as a final matter the findings of fact, conclusions of law and recommendations contained in
9 the Special Master's Report, Part I, as to the process employed in arriving at and fixing, and the
10 fairness, reasonableness and adequacy of the Plans of Distribution for the Settlement Classes.

11 16. The Court hereby adopts and fixes the claims processing protocols for the Indirect
12 Purchaser Settlement Class that are recommended by the Special Master in the Report, Part II, at ¶¶
13 29 – 38. The Court also adopts as a final matter the findings of fact, conclusions of law and
14 recommendations contained in the Special Master's Report, Part II, as to the process employed in
15 arriving at and fixing, and the fairness, reasonableness and adequacy of the claims processing
16 protocols for the Indirect Purchaser Settlement Class.

17 17. The Court has carefully and fully reviewed and considered all of the objections to the
18 proposed settlements, the objections to the certification of the Indirect Purchaser Settlement Class,
19 the objections to the proposed plan of distribution for the Indirect Purchaser Settlement Class and to
20 the form of notice to that Class, and, for the reasons set forth in Plaintiffs' responses to the
21 objections, as further developed at the fairness hearing, the Court concludes that none of these
22 objections raises any grounds to decline certification of the Indirect Purchaser Settlement Class, to
23 deny final approval to the Settlements or to fail to adopt the plan of distribution for the Indirect
24 Purchaser Settlement Class, and accordingly the Court hereby OVERRULES each of the objections.

25 18. Without affecting the finality of this Judgment in any way, this Court hereby retains
26 continuing and exclusive jurisdiction over: (a) implementation of the terms and conditions of the
27 Settlement Agreements; (b) disposition of the Settlement Funds as defined in each Agreement and
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distribution to class members pursuant to further orders of this Court; (c) the designation of *cy pres* recipients and the *cy pres* disposition of settlement funds should that become necessary; (d) the Settling Defendants until the Final Judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties has been performed pursuant to the Settlement Agreements; and (e) all parties and Releasors and Releasees for the purpose of enforcing and administering the Settlement Agreements and the mutual releases, including the execution and filing of any documents contemplated by, or executed in connection with, the Settlement Agreements.

19. In the event that a settlement does not become effective in accordance with the terms of any of the relevant Settlement Agreements, then the judgment shall be rendered null and void and shall be vacated as to that Agreement, and in such event, all orders entered and releases delivered in connection herewith shall be null and void and the parties to that Agreement shall be returned to their respective positions *ex ante*.

20. The Court finds, pursuant to Rules 54(a) and (b), Federal Rules of Civil Procedure, that this Final Judgment should be entered and further finds that there is no just reason for delay in the entry of this Final Judgment, as a Final Judgment, as to the parties to the Agreements. Accordingly, the Clerk is hereby directed to enter the Judgment of dismissal with prejudice as to Settling Defendants, forthwith.

Dated: June 27, 2014

PHYLLIS J. HAMMON
Judge of the United States District Court
Southern District of New York



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re DYNAMIC RANDOM ACCESS
 MEMORY (DRAM) ANTITRUST
 LITIGATION

Case No. M-02-1486-PJH
 MDL No. 1486

This Document Relates to:
 ALL INDIRECT PURCHASER ACTIONS
 and

State of California et al. v. Infineon Technologies AG, et al.
State of New York v. Micron Technology Inc., et al.
State of California et al. v. Samsung Electronics Co., Ltd., et al.
State of California et al. v. Winbond Electronics Co.
Petro Computer Systems, Inc. v. Hitachi, Ltd.
Petro Computer Systems, Inc. v. Mitsubishi Electric Corporation, et. al.

**[PROPOSED] ORDER GRANTING
 AWARD OF ATTORNEYS' FEES,
 REIMBURSEMENT OF EXPENSES AND
 INCENTIVE AWARDS TO PLAINTIFFS;
 FINALLY ADOPTING SPECIAL
 MASTER'S REPORT AND
 RECOMMENDATIONS, PART III;
 FINAL JUDGMENT**

Case No. C 06-4333 PJH
 Case No. C 06-6436 PJH
 Case No. C 07-1347 PJH
 Case No. C 07-2589 PJH
 Case No. C 12-5213 PJH
 Case No. C 12-5214 PJH

**[PROPOSED] ORDER RE ATTORNEYS' FEES, COST AND INCENTIVE AWARDS, ADOPTION OF SPECIAL
 MASTER'S REPORT AND JUDGMENT - CASE NO. M-02-1486-PJH**

1 *Petro Computer Systems, Inc. v. Toshiba*
2 *Corporation, et. al.*

3 *State of California et al., v. Toshiba*
4 *Corporation et al.,*

5 *State of California et*
6 *al., v. Mitsubishi Electric Corporation, et. al.*

7 *State of California et al., v. Hitachi, Ltd.*

) Case No. C 12-5215 PJH

) Case No. C 12-5230 PJH

) Case No. C 12-5229 PJH

) Case No. C 12-5231 PJH

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[PROPOSED] ORDER RE ATTORNEYS' FEES, COST AND INCENTIVE AWARDS, ADOPTION OF SPECIAL
MASTER'S REPORT AND JUDGMENT – CASE NO. M-02-1486-PJH

1 The Indirect Purchaser Plaintiffs' counsel and the Attorneys General (collectively,
2 "Counsel") have moved the Court to:

3 (1) Award them an aggregate fee of \$77,680,000.00, which is 25% of the total of the
4 Settling Defendants' settlement payments (the "Settlement Fund") of \$310,720,000.00, reimburse
5 the Indirect Purchaser Plaintiffs' counsel litigation costs and expenses in the amount of
6 \$6,338,232.00, reimburse the Attorneys General litigation costs and expenses in the amount of
7 \$5,483,468.63, as identified in the "Indirect Purchaser Plaintiffs' And Attorneys Generals' Joint
8 Application For Attorneys' Fees; Indirect Purchaser Plaintiffs' Application for Costs and Incentive
9 Awards; And Attorneys Generals' Application for Costs," filed February 28, 2014 (Dkt. No. 2181)
10 ("Joint Application"). (The supporting documentation for the Joint Application is Docket Nos. 2182
11 – 2185-9.)

12 (2) Award each of the named plaintiffs who served as class representatives in the lead
13 private action, *Petro Computer Systems v. Micron Technology, Inc.*, C-05-02472-PJH, a payment,
14 usually called an "incentive award," of \$5,000.00, and award each of the plaintiffs in the other
15 settled actions an incentive award of \$500.00.

16 (3) Adopt, pursuant to Rule 53(f), Federal Rules of Civil Procedure, as a final matter, the
17 findings of fact, conclusions of law and recommendations contained in the Special Master's Report,
18 Part III: Attorneys' Fees, Expenses and Incentive Awards, filed November 5, 2013 (Dkt. No. 2155)
19 ("Report, Part III").

20 A hearing was held on June 25, 2014, and this matter came on before the Court to determine,
21 *inter alia*, whether to award Counsel the requested aggregate fee, cost reimbursements and the
22 plaintiffs' incentive awards, and whether to adopt as a final matter the findings, conclusions and
23 recommendations in the Report, Part III. Four objections were filed to the request for an award of
24 attorneys' fees. The substance of these objections fall broadly into the following categories: (1) that
25 this is a "mega-fund" case where, as a matter of law, the fee award should be less than the Ninth
26 Circuit benchmark fee of 25%; (2) the requested fee would be a "windfall" for the private counsel
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1 in this case because a majority of the work was done by the Attorneys General; (3) the Court must,
 2 as a matter of law, review counsel's individual contemporaneously maintained time records before
 3 awarding a fee; and (4) any money that may be distributed *cypres* must be removed from the
 4 computation of the "common fund." No objections were filed to the requests for cost
 5 reimbursement or to the request for incentive awards to Plaintiffs. No objectors appeared at the
 6 fairness hearing.

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 8 The Court having carefully reviewed and considered Plaintiffs' motion for attorneys' fees,
 9 expenses and incentive awards (Dkt. No. 2186), the Joint Application, the Report Part III, Plaintiffs'
 10 motion for final adoption of the Report, Part III (Dkt. No. 2187), the objections raised to the
 11 requested attorneys' fee award (Dkt. Nos. 2199, 2200, 2201, 2204, 2226 and 2228), and the
 12 Plaintiffs' responses to these objections (Dkt. No. 2221), the arguments of counsel and the records
 13 on file in this action, and having fully addressed these objections and other issues at the hearing, the
 14 Court has rejected these objections and determined that: (1) Plaintiffs' motion for an award of
 15 attorneys' fees, expenses and incentive awards is GRANTED with the modification noted below;
 16 and (2) Plaintiffs' motion for final adoption of the findings of fact, conclusions of law and
 17 recommendations set out in the Report, Part III, is GRANTED with the modification noted below.
 18 Accordingly, good cause appearing therefor, it is:

19 ORDERED, ADJUDGED AND DECREED that:

20 1. The Court has jurisdiction over the subject matter of this litigation, and all actions
 21 within this litigation, and over the parties to the Settlement Agreements, including all members of
 22 the Indirect Purchaser Settlement Class, the Government Purchaser Settlement Classes, the Plaintiffs
 23 and the Settling Defendants, and any person or entity claiming by, for, or through the Settling
 24 Parties with regard to the Released Claims, as defined in the Settlement Agreements.

25 2. Four (4) objections to the Joint Application were filed on behalf of a total of nine (9)
 26 members of the Indirect Purchaser Settlement Class. The Court has carefully reviewed and
 27

1 considered the objections to the requested attorneys' fee award, and hereby OVERRULES each of
2 the objections as being without merit for the reasons stated in the "Indirect Purchaser Plaintiffs' and
3 Attorneys General's Joint Reply Memorandum In Support of (1) Joint Application for Attorneys'
4 Fees, Separate Requests for Expense Reimbursements and Incentive Awards and (2) Motion for
5 Final Adoption of Special Master's Report, Part III: Attorneys' Fees, Expenses and Incentive
6 Awards; Responses to Objections to Joint Fee Application," filed June 10, 2014 (Dkt. No. 2221) and
7 for the reasons stated at the June 25, 2014 hearing.

8
9 3. The Court has reviewed the computation of the common fund made by Counsel and
10 the Special Master and finds it reasonable. The Court has reviewed the summary of attorney and
11 paralegal hours spent in the prosecution of these cases, and performed the lodestar cross-check
12 required for a percentage of the fund fee award. The Court hereby ADOPTS as a final matter the
13 findings of fact, conclusions of law and recommendations contained in the Special Master's Report,
14 Part III, with the following modification. Counsel's Joint Application requested that the Court
15 approve cost items totaling \$653,002.00, which are fees for the services of Berman DeValerio, a law
16 firm appointed by the Special Master to advocate for the interests of resellers in the Indirect
17 Purchaser Settlement Class during the negotiation of the plan of distribution, and Susman Godfrey, a
18 law firm representing a specialty DRAM reseller that was invited by the Special Master to
19 participate in those negotiations. The Special Master's Report, Part III, recommends that these fees
20 be treated as recoverable cost items. However, the Court finds that it is more appropriate to include
21 these fees within the fee award to counsel.

22 4. The Court hereby awards Counsel attorneys' fees in the amount of \$78,333,002.00
23 (approximately 25.2% of the Settlement Fund) together with interest earned on this amount at the
24 same rate as that earned on the Settlement Fund until disbursed to Counsel.


25 5. The Court hereby awards Indirect Purchaser Plaintiffs' Counsel their litigation costs
26 and expenses in the amount of \$5,685,230.00.

13. Without affecting the finality of this Order and Judgment in any way, this Court hereby retains continuing and exclusive jurisdiction over: (a) disposition of the Settlement Funds as

1 defined in each Settlement Agreement and distribution to class members, and potentially to *cy pres*
2 recipients, pursuant to further orders of this Court; and (b) hearing and ruling on any matters relating
3 to the plan of distribution of settlement proceeds and any matters regarding claims made by
4 members of the Settlement Classes to share in the settlement proceeds.

5
6 14. The Court finds, pursuant to Rules 54(a) and (b), Federal Rules of Civil Procedure,
7 that this Final Judgment as to the award of attorneys' fees, reimbursement of litigation costs and
8 expenses and incentive awards should be entered as a Final Judgment, and further finds that there is
9 no just reason for delay in the entry of this Final Judgment.

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11 Dated: June 27, 2014

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The seal of the United States District Court for the Northern District of California is visible, featuring the text "UNITED STATES DISTRICT COURT" and "NORTHERN DISTRICT OF CALIFORNIA". Overlaid on the seal is a rectangular stamp that reads "IT IS SO ORDERED" at the top, followed by a handwritten signature, and "Judge Phyllis J. Hamilton" at the bottom. To the right of the seal, the text "PHYLLIS J. HAMILTON" and "Judge of the United States District Court" is printed.
PHYLLIS J. HAMILTON
Judge of the United States District Court

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE: DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
LITIGATION**

No. M-02-1486 PJH

MDL No. 1486

**THIS DOCUMENT RELATES TO:
ALL INDIRECT-PURCHASER ACTIONS
& STATE OF NEW YORK v. MICRON
TECHNOLOGY, et al. (No. C-06-6436-
PJH)**

**STATE OF CALIFORNIA, et al. v.
INFINEON TECHNOLOGIES AG, et al.**

No. C-06-4333 PJH

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between Toshiba Corporation and Toshiba America Electronic Components, Inc. and their affiliates and subsidiaries (collectively "Toshiba" or the "Settling Toshiba Defendants") on the one hand, and the "Settling Plaintiffs" on the other hand. The "Settling Plaintiffs" are comprised of the Indirect Purchaser Plaintiffs, including all indirect purchasers of DRAM (including DRAM modules and products containing DRAM), anywhere in the United States at any time during the period January 1, 1998 and continuing through December 31, 2002 (the "Complaint Period"), the Governmental Purchaser Plaintiffs, and the persons and entities represented by the Attorneys General as defined below.

WHEREAS, the Settling Plaintiffs in these actions allege that the Settling Toshiba

1 Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of
2 DRAM at artificially high levels and to restrict output of DRAM in violation of Section 1 of the
3 Sherman Act, the California Cartwright Act, the California Unfair Competition Law and/or the
4 antitrust, unfair competition and/or consumer protection laws of all jurisdictions within the United
5 States; and
6

7 WHEREAS, the Settling Plaintiffs are prosecuting such claims in the above-captioned
8 actions and in the actions to be filed against the Settling Toshiba Defendants contemporaneously
9 with this Agreement, as well as various other actions filed and/or pending in federal and state
10 jurisdictions listed on Exhibit A hereto, all of which are referred to collectively as "the Actions,"
11 on their own behalf and on behalf of all Indirect Purchaser and Governmental Purchaser
12 Plaintiffs, as defined in paragraphs 2 and 3 below; and

13 WHEREAS, the Settling Plaintiffs have conducted an investigation into the facts and the
14 law regarding the Actions and have concluded that their claims are valid, but nevertheless believe
15 that resolving their claims against the Settling Toshiba Defendants according to the terms set
16 forth below is in the best interest of the Settling Plaintiffs; and

17 WHEREAS, the Settling Toshiba Defendants believe that none of them are liable for the
18 claims being asserted and that they have good defenses thereto, but nevertheless agree to enter
19 into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome
20 and protracted litigation, to obtain the releases, orders and judgment contemplated by this
21 Agreement, and to put to rest with finality all claims that have been or could have been asserted
22 against the Settling Toshiba Defendant Releasees, as defined below, based on or arising out of the
23 allegations of the Actions, as more particularly set out below;

24 NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth
25 herein and for other good and valuable consideration, it is agreed by and among the undersigned
26 that all of the Actions be settled, compromised and dismissed on the merits with prejudice as to
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1 the Settling Toshiba Defendant Releasees, as defined below, subject to the approval of the Court,
2 on the following terms and conditions, and incorporating the preceding clauses:

3 A. Definitions.

4
5 1. For purposes of this Agreement, "Indirect DRAM Purchases" is defined as any and
6 all purchases of DRAM or any product containing DRAM, anywhere in the United States or any
7 United States territory, or purchases of DRAM or any product containing DRAM from any seller
8 located in the United States or any United States territory, and which were not purchases made
9 directly from the Defendants, their parents, subsidiaries and affiliates.

10
11 2. For purposes of this Agreement, "Indirect Purchaser Plaintiffs" is defined as all
12 natural persons and nongovernmental entities, who at any time during the Complaint Period,
13 made Indirect DRAM Purchases. Excluded from this definition are all parties named as
14 defendants in any of the above-captioned actions and in the complaints to be filed against the
15 Settling Toshiba Defendants contemporaneously with this Agreement ("Defendants"), and their
16 parents, subsidiaries and affiliates; all governmental entities; any judicial officer presiding over
17 the Actions and the members of his/her immediate family and judicial staff; and all alleged co-
18 conspirators.

19 3a. For purposes of this Agreement, "Attorneys General" are defined as the following
20 States and Commonwealths acting in their sovereign or proprietary capacity, and the persons and
21 entities therein which they represent acting in their representative or *parens patriae* or any other
22 capacity, or acting pursuant to Federal Rule of Civil Procedure 23 as alleged in the Third
23 Amended Complaint filed in *State of California et. al. v. Infineon Technologies et al.*, C 06-4333
24 PJH, and in the complaint to be filed against the Settling Toshiba Defendants contemporaneously
25 with this Agreement by the following States: Arizona, Arkansas, California, Colorado, Florida,
26 Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,
27 Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota,
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1 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia,
2 Washington, West Virginia and Wisconsin ("Plaintiff States").
3

4 3b. For purposes of this Agreement, "Governmental Purchaser Plaintiffs" is defined as all
5 of the States named as Plaintiffs in *State of California et. al. v. Infineon Technologies et. al.*, Case
6 No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*, Case No.
7 C-06-6436 PJH (N.D. Cal), and in the complaint to be filed against the Settling Toshiba
8 Defendants contemporaneously with this Agreement by the Plaintiff States in their sovereign or
9 proprietary capacities, as well as all state and local government entities in each of them, including
10 without limitation, state agencies and departments, public undergraduate and graduate education
11 institutions, political subdivisions such as K-12 school districts, cities, counties, utilities and
12 special districts, and including the plaintiffs in *City of Los Angeles et. al. v. Infineon Technologies*
13 *et. al.*, Case No. CGC 08-480561 (Cal. Superior Ct.), who at any time during the Complaint
14 Period purchased DRAM, including any product containing DRAM, anywhere in the United
15 States. The Governmental Purchaser Plaintiffs are represented by the Attorneys General of the
16 Plaintiff States, to the full extent permitted by state law and as alleged in *State of California et. al.*
17 *v. Infineon Technologies et. al.*, Case No. C-06-4333 PJH (N.D. Cal.), *State of New York v.*
18 *Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal), and in the complaint to be
19 filed against the Settling Toshiba Defendants contemporaneously with this Agreement by Plaintiff
20 States, et al.
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23 3c. For purposes of this Agreement, "Class of Governmental Purchaser Plaintiffs" shall
24 refer to those government entities represented by the Attorneys General of the Plaintiff States of
25 California and New Mexico acting in a class capacity pursuant to Rule 23 as alleged in the Third
26 Amended Complaint filed in *State of California et. al. v. Infineon Technologies et. al.*, C 06-4333
27
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1 PJH, and in the complaint to be filed against the Settling Toshiba Defendants contemporaneously
2 with this Agreement by Plaintiff States, et al. Excluded from this definition are any judicial
3 officers presiding over the Actions and the members of his/her immediate family and judicial
4 staff; and all federal government entities.

5
6 4. For purposes of this Agreement, "DRAM" is defined to mean dynamic random access
7 memory devices and components, including without limitation, all types of EDO DRAM, fast-
8 page mode (FPM) DRAM, RLDRAM, synchronous dynamic random access memory
9 ("SDRAM"), Rambus dynamic random access memory ("RDRAM"), asynchronous dynamic
10 random access memory ("ASYNC") and double data rate dynamic random access memory
11 ("DDR") ("DRAM"), including modules containing DRAM, EDO DRAM, FPM DRAM,
12 RLDRAM, RDRAM, SDRAM, ASYNC, and/or DDR. For purposes of this Agreement,
13 "DRAM" does not include static random access memory ("SRAM") devices and components.
14

15 5. "Settling Toshiba Defendant Releasees" shall refer to the Settling Toshiba
16 Defendants, and to all of their respective past and present, direct and indirect, parents,
17 subsidiaries, affiliates; the predecessors, successors and assigns of any of the Settling Toshiba
18 Defendants; and each and all of the present and former principals, partners, officers, directors,
19 supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and
20 assigns of each of the foregoing.

21 6. "Releasers" shall refer to the Settling Plaintiffs and to their past and present officers,
22 directors, employees, agents, stockholders, attorneys, servants, representatives, corporate parents,
23 subsidiaries, affiliates, corporate partners, insurers and all other persons, partnerships or
24 corporations with whom any of the former have been, or are now, affiliated, and the predecessors,
25 successors, heirs, executives, administrators and assigns of any of the foregoing.

26 7. The "Settlement Fund" shall refer to the payment in the amount of \$7,250,000 in
27 United States funds to be made by the Settling Toshiba Defendants pursuant to paragraph 21 of
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1 this Agreement, plus the payment in the amount of up to \$200,000 in United States funds to be
2 made by the Settling Toshiba Defendants pursuant to paragraph 26 of this Agreement, plus all
3 accrued interest on those payments.

4 8. "Co-Lead Counsel" shall refer to the following counsel for the Indirect Purchaser
5 Plaintiffs and to the following counsel for the Attorneys General:
6

7 Josef D. Cooper
8 Cooper & Kirkham, P.C.
9 357 Tehama Street, 2nd Floor
10 San Francisco, CA 94103

11 Timothy D. Battin
12 Straus & Boies, LLP
13 4041 University Drive
14 5th Floor
15 Fairfax, VA 22030

16 Daniel E. Gustafson
17 Gustafson Gluek PLLC
18 650 Northstar East
19 608 Second Avenue South
20 Minneapolis, MN 55402

21 Daniel J. Mogin
22 The Mogin Law Firm, P.C.
23 110 Juniper Street
24 San Diego, CA 92101

25 Kathleen Foote
26 Senior Assistant Attorney General
27 Office of the Attorney General of California
28 455 Golden Gate Avenue
San Francisco, CA 94102-3664

Lizabeth Brady
Chief, Multistate Antitrust Enforcement
Office of the Attorney General
Antitrust Division
PL-01, The Capitol
Tallahassee, FL 32399-1050

1
2 Blake L. Harrop
3 Senior Assistant Attorney General
4 Office of the Attorney General of Illinois
5 James R. Thompson Center
6 100 W. Randolph Street, 13th Floor
7 Chicago, IL 60601

8 Tim Nord
9 Senior Assistant Attorney General
10 Oregon Department of Justice
11 1162 Court Street NE
12 Salem, OR 97301-4096

13 Jeremy Kasha
14 Assistant Attorney General
15 Antitrust Bureau
16 Office of the Attorney General of New York
17 120 Broadway, 26th Floor
18 New York, New York 10271

19 9a. "Samsung Settlement Agreement" shall refer to the settlement agreement entered
20 into between the Settling Plaintiffs and defendants Samsung Semiconductor, Inc. and Samsung
21 Electronics Company Ltd. (collectively "Samsung") as set forth in *In re DRAM Antitrust*
22 *Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable Charles B.
23 Renfrew has been appointed as Special Master (See Docket Entry Nos. 1787—1789).

24 9b. "Winbond Settlement Agreement" shall refer to the settlement agreement entered
25 into between the Settling Plaintiffs and defendants Winbond Electronics Corporation and
26 Winbond Electronics Corporation America (collectively "Winbond") as set forth in *In re DRAM*
27 *Antitrust Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable
28 Charles B. Renfrew has been appointed as Special Master (See Docket Entry Nos. 1787—1789).

9c. "Multi-Defendant Settlement Agreement" shall refer to the settlement agreement
entered into between the Settling Plaintiffs and defendants Infineon Technologies AG and
Infineon Technologies North America Corp. (collectively "Infineon"), Elpida Memory, Inc. and
Elpida Memory (USA) Inc. (collectively "Elpida"), NEC Electronics America, Inc., presently

1 known as Renesas Electronics America Inc. ("NEC"), Mosel Vitelic Corp. and Mosel Vitelic, Inc.
2 (collectively "Mosel"), Micron Technology, Inc. and Micron Semiconductor Products, Inc.
3 (collectively "Micron") and Hynix Semiconductor Inc. and Hynix Semiconductor America Inc.
4 (collectively "Hynix"), as set forth in *In re DRAM Antitrust Litigation*, Master File No. M-02-
5 1486 PJH, MDL No. 1486, in which the Honorable Charles B. Renfrew has been appointed as
6 Special Master (See Docket Entry No. 2099).

7 9.d. "Nanya Settlement Agreement" shall refer to the settlement agreement entered into
8 between the Settling Plaintiffs and defendants Nanya Technology Corporation and Nanya
9 Technology Corporation USA, Inc. ("collectively Nanya") as set forth in *In re DRAM Antitrust*
10 *Litigation*, Master File No. M-02-1486 PJH, MDL No. 1486, in which the Honorable Charles B.
11 Renfrew has been appointed as Special Master (See Docket Entry No. 2101).

12 B. Approval of this Agreement and Dismissal
13 of Claims Against the Settling Toshiba Defendants.

14 10. The Settling Plaintiffs have not heretofore filed complaints against Toshiba in any
15 federal or state jurisdiction. Rather, the Settling Plaintiffs and Toshiba entered into tolling
16 agreements to suspend the running of all applicable statutes of limitations during the pendency of
17 discussions to settle the claims which Settling Plaintiffs have or might have against Toshiba based
18 on or arising out of the allegations of the Actions. Those discussions have resulted in this
19 Agreement. It is contemplated that within fifteen (15) days after the execution of this Agreement,
20 the Indirect Purchaser Plaintiffs and the Attorneys General will file actions against the Settling
21 Toshiba Defendants in the United States District Court for the Northern District of California.
22 Claims in the actions will be released upon the effective date of the Agreement. Counsel for the
23 Settling Toshiba Defendants specified in the signature block to this Agreement below will accept
24 service of these complaints on behalf of their clients and so indicate to the Court. Counsel for the
25 Settling Parties (as defined in Paragraph 11, below) will jointly request the Court to stay the
26 newly-filed actions against the Settling Toshiba Defendants pending completion of proceedings
27 before the Special Master and consideration of the fairness of this Settlement. The tolling
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1 agreements currently in effect suspending the running of any statute of limitations against the
2 Settling Plaintiffs will remain in effect, without the need for extensions, until approval of this
3 Agreement becomes final, as defined in Paragraph 15 below, or, if approval of the Agreement
4 does not become final, until thirty (30) days after approval of the Agreement has been rejected
5 and all rights of appeal therefrom have expired.

6 11. The Settling Plaintiffs and the Settling Toshiba Defendants ("Settling Parties"), and
7 the Settling Parties' counsel, shall use their best efforts to effectuate this Agreement and its
8 purpose, and secure the prompt, complete and final dismissal with prejudice of the Actions as to
9 the Settling Toshiba Defendant Releasees, but not as to any party that is not a Settling Toshiba
10 Defendant Releasee. The Settling Parties agree to take whatever further steps, if any, may be
11 necessary in this regard, including staying any federal and state court litigation immediately after
12 execution of this Agreement and implementation of this Agreement in federal and individual state
13 court actions.

14 12. Within fifteen (15) days after execution of this Agreement, Settling Plaintiffs shall
15 submit to the Court a proposed, stipulated order referring this settlement to a Special Master so
16 that the Special Master may issue a report and recommendation to the Court as to how the
17 Settlement Fund shall be divided, allocated and distributed consistent with this Agreement. The
18 Settling Parties also agree that the Court may refer issues concerning the award(s) of attorneys'
19 fees to the Special Master. The Special Master's report(s) and recommendation(s) shall be issued
20 and submitted to the Court pursuant to Federal Rule of Civil Procedure 53. The Settling Parties
21 agree that the Court may appoint the same Special Master who is currently charged with issuing a
22 report and recommendation as to the Samsung, Winbond, Multi-Defendant and Nanya Settlement
23 Agreements. If the same Special Master is appointed, the Settling Toshiba Defendants agree not
24 to relitigate rulings already made by the Special Master prior to their first appearance before the
25 Special Master unless the Settling Toshiba Defendants raise issues, facts, or legal principles
26 unique to the Settling Toshiba Defendants. The Settling Plaintiffs agree that the Settling Toshiba
27 Defendants may raise as error in subsequent proceedings in the district court or in any reviewing
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1 court any issue preserved by any settling defendant in the proceedings before the Special Master
2 prior to after the Settling Toshiba Defendants' first appearance in that matter. Within thirty (30)
3 days after the Court adopts, modifies, and/or rules on any objections to the Special Master's
4 report and recommendation regarding the division, allocation and distribution of the Settlement
5 Fund, the Settling Plaintiffs shall submit to the Court a motion for preliminary approval of the
6 settlement that shall include a proposed plan for how the settlement is to be divided, allocated and
7 distributed.

8
9 13a. The Settling Parties agree that, subject to Court approval, notice of this settlement
10 shall be directed to, among others, (1) a settlement class pursuant to Federal Rule of Civil
11 Procedure 23 and applicable state laws of all natural persons and non-governmental entities, who,
12 at any time during the period from January 1, 1998 through December 31, 2002, made Indirect
13 DRAM Purchases (as defined in this Agreement), and (2) the Attorneys General and the persons
14 and entities they represent, as set forth in the operative complaints in *State of California, et al. v.*
15 *Infineon Technologies AG, et al.*, Case No. C 06-4333 PJH (N.D. Cal.), *State of New York v.*
16 *Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal), *City of Los Angeles et. al. v.*
17 *Infineon Technologies et. al.*, Case No. CGC 08-480561 (Cal. Superior Ct.), and in the action to
18 be filed against the Settling Toshiba Defendants contemporaneously with this Agreement by
19 Plaintiff States, et al.

20
21 13b. The share of the costs of the Special Master, and the costs of notice and claims
22 administration, attributable to this Agreement (*see infra* paragraph 13c) shall be paid from the
23 Settlement Fund, to which the Settling Toshiba Defendants will make a contribution as set forth
24 in paragraph 26. The Settling Toshiba Defendants are not responsible for separately paying any
25 costs associated with the Special Master, notice, or claims administration, except as those costs
26 are paid from the funds provided for notice and claims administration pursuant to this Settlement
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1 as set forth in paragraph 26. To the extent that notice and claims administration costs are actually
2 paid from these funds, under no circumstances will such expenditures be refunded to the Settling
3 Toshiba Defendants. To the extent that any amounts advanced by the Settling Toshiba
4 Defendants' portion of the Settlement Fund allocated for the expenses described in Paragraph 26
5 are not expended for any reason, those amounts shall be refunded to the Settling Toshiba
6 Defendants no later than thirty (30) days after costs of notice and administration have been paid.

8 13c. The Settling Plaintiffs will make a good faith effort to coordinate proceedings before
9 the Special Master, as well as notice and administration of this Settlement, with the proceedings
10 before the Special Master and notice and administration of the Samsung, Winbond, Multi-
11 Defendant and Nanya Settlement Agreements, and any other settlements that may be reached
12 with other current or former DRAM producers. If any coordinated proceedings take place before
13 the Special Master, or coordinated notice or claims administration is used, the Settling Toshiba
14 Defendants' share of the cost of the coordinated proceedings, notice and claims administration
15 shall be the cost of those proceedings, notice and administration times a fraction where \$7.25
16 million is the numerator and the total settlements in the DRAM Antitrust Litigation of all settling
17 parties whose settlements are included in the coordinated proceedings before the Special Master,
18 notice, and claims administration at the time that the coordinated proceedings occur, coordinated
19 notice is sent, and the coordinated claims administration takes place, is the denominator.

22 13d. The motion(s) for approval of the form(s) of notice and method(s) of disseminating
23 notice shall recite and ask the Court to find that any notice of settlement by publication to the
24 Settling Plaintiffs constitutes valid, due and sufficient notice, constitutes the best notice
25 practicable under the circumstances, and complies fully with the requirements of Federal Rule of
26 Civil Procedure 23 and any other applicable law. Notice to the Governmental Purchaser
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1 Plaintiffs, if required, may differ in form and substance under applicable laws from notice to the
2 Indirect Purchaser Plaintiffs.

3 13e. The claims administrator will be employed by the Settling Plaintiffs. The Settling
4 Plaintiffs will from time to time advise counsel for the Settling Toshiba Defendants as to the
5 status of notice and claims administration, and the costs incurred in that process to date.
6

7 13f. In no event shall any Settling Toshiba Defendant have any responsibility, financial
8 obligation, or liability whatsoever with respect to the investment, distribution, or administration
9 of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution
10 and administration, with the sole exception of the provisions set forth in Paragraphs 13(b) and
11 13(c) of this Agreement.

12 14. The Settling Parties shall jointly seek entry of an order and final judgment, the text of
13 which the Settling Parties shall agree upon. The terms of that order and final judgment will
14 include, at a minimum, the substance of the following provisions:
15

16 a. as to the Actions, approving finally this settlement and its terms as being a fair,
17 reasonable and adequate settlement as to the Settling Plaintiffs within the meaning of Rule 23 of
18 the Federal Rules of Civil Procedure or other applicable law and directing its consummation
19 according to its terms, and providing for the release of all claims of the Releasers and the
20 class(es) they represent, as set forth in this Agreement;
21

22 b. as to the Settling Toshiba Defendants, the Actions be dismissed with prejudice
23 and, except as provided for in this Agreement, without recovery of costs by any party;

24 c. reserving exclusive jurisdiction over this settlement and this Agreement,
25 including the administration and consummation of this settlement to the United States District
26 Court for the Northern District of California;
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1 d. determining under Federal Rule of Civil Procedure 54(b) or 56 that there is no
2 just reason for delay and directing that the judgment of dismissal as to Settling Toshiba
3 Defendants be final;

4 e. as to the Settling Toshiba Defendants, stating that the Toshiba Defendants
5 contend that they are not liable for the claims being asserted, but nevertheless, to avoid further
6 expense, inconvenience, and the distraction of burdensome and protracted litigation, and because
7 the Toshiba Defendants are no longer in the DRAM business, the Toshiba Defendants have
8 agreed, for a period of three years from the date of execution of this Agreement, to the imposition
9 of an order enjoining and restraining the Settling Toshiba Defendants from engaging in any price
10 fixing, market allocation and bid rigging, with respect to the sale of any DRAM product for
11 delivery in the United States, which constitutes horizontal conduct that are *per se* violations of
12 Section 1 of the Sherman Act, including participating in meetings, conversations, and
13 communications with each other and other DRAM manufacturers (other than among affiliated
14 entities) in the United States and elsewhere to discuss the prices of DRAM to be sold to original
15 equipment manufacturers of personal computers and servers ("OEM customers") and exchanging
16 information on sales of DRAM to OEM customers, for the purpose of monitoring and enforcing
17 adherence to agreed-upon prices;
18

19 f. as to the Settling Toshiba Defendants, requiring them to certify that Toshiba
20 Corporation has an antitrust compliance program and that the Settling Toshiba Defendants do not
21 manufacture or sell DRAM. In the event that any of the Settling Toshiba Defendants
22 manufacture or sell DRAM within three (3) years from the date of this Agreement, they shall (1)
23 establish, if not already established, and maintain a program to provide relevant antitrust
24 compliance education to the Settling Toshiba Defendants' officers and employees with
25 responsibility for pricing and sales of DRAM in and to the United States regarding the legal
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1 standards imposed by federal and state antitrust laws, and the Settling Toshiba Defendants shall
2 have ninety (90) days from final approval of the Agreement to establish this program if one has
3 not already been established; and (2) for three (3) years from that date, on an annual basis, each
4 Settling Defendant shall certify to a designated representative of the Settling Plaintiffs that it is
5 fully compliant with the provisions of this paragraph and submit a written report describing the
6 nature of the program it has implemented or is maintaining pursuant to this sub-paragraph. The
7 Settling Plaintiffs are required to provide notice to the Settling Toshiba Defendants that the
8 compliance report is due thirty (30) days prior to the deadline for its submission. Nothing in this
9 provision shall effect a waiver of any privileges otherwise applicable to the content of any
10 antitrust compliance training;

11
12 g. as to the Settling Toshiba Defendants, staying any action regarding DRAM
13 filed against them by the Settling Plaintiffs while approval of this Agreement is pending within
14 the meaning of paragraph 15;

15
16 h. Co-Lead Counsel shall file with the Clerk of the Court a record of the Settling
17 Plaintiffs who timely excluded themselves from the settlement, shall provide a copy of the record
18 to counsel for the Settling Toshiba Defendants, and shall maintain the record for a period of five
19 years;

20
21 i. certifying solely for purposes of this settlement the Class of Indirect Purchaser
22 Plaintiffs defined above;

23 j. certifying solely for purposes of this settlement the Class of Governmental
24 Purchaser Plaintiffs; and

25 k. approving the payment of attorneys' fees as awarded by the Court out of the
26 Settlement Fund.

1 15. This Agreement shall become final when the Court has entered an order and final
2 judgment approving this Agreement under Federal Rule of Civil Procedure 23(e) and/or
3 applicable state laws and dismissing the Actions with prejudice as to the Settling Toshiba
4 Defendants against the Settling Plaintiffs and one of the following dates occurs: (a) if an appeal is
5 taken, (i) the date of final affirmance on appeal of the order and final judgment, the expiration of
6 the time for a petition for or a denial of a writ of *certiorari* to review the order and final judgment
7 and, if *certiorari* is granted, the date of final affirmance of the order and final judgment following
8 review pursuant to that grant, or (ii) the date of final dismissal of any appeal from the order and
9 final judgment or the final dismissal of any proceedings on *certiorari* to review the order and
10 final judgment; or (b) if no appeal is filed, the expiration date of the time for the filing or noticing
11 of any appeal from the order and final judgment, i.e., thirty (30) days after entry of the order and
12 final judgment. This Agreement shall be deemed executed as of the last date of signature by the
13 Settling Toshiba Defendants and Co-Lead Counsel, and Co-Lead Counsel shall give notice to the
14 Settling Toshiba Defendants within three (3) business days after the Agreement is deemed
15 executed. The date of execution of this Agreement shall not be extended in the event that any
16 other State, which is currently a plaintiff in *State of California, et al. v. Infineon Technologies*
17 *AG, et al.*, Case No. C 06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et*
18 *al.*, Case No. C-06-6436 PJH (N.D. Cal.), or the complaint to be filed against Settling Toshiba
19 Defendants contemporaneously with this Agreement by Plaintiff States, et al., signs and agrees to
20 be bound by this Agreement. As of the date of execution of this Agreement, the Settling Parties
21 shall be bound by the terms of this Agreement and this Agreement shall not be rescinded except
22 in accordance with paragraphs 25 or 31 of this Agreement.

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26 16. Neither this Agreement (whether or not it should become final) nor the order or final
27 judgment provided for in Paragraph 14, nor any and all negotiations, documents and discussions
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1 associated with such negotiation, shall be deemed or construed to be an admission by or form the
2 basis of an estoppel by a third party against any of the Settling Toshiba Defendants or any of the
3 Settling Toshiba Defendant Releasees, or evidence of any violation of any statute or law or of any
4 liability or wrongdoing whatsoever by any of the Settling Toshiba Defendants or any of the
5 Settling Toshiba Defendant Releasees, or of the truth of any of the claims or allegations contained
6 in any complaint or any other pleading filed by the Settling Plaintiffs in the Actions, and evidence
7 thereof shall not be discoverable, or used directly or indirectly, in any way, whether in the
8 Actions or in any other action or proceeding. Neither this Agreement, nor any of its terms and
9 provisions, nor any of the negotiations or proceedings connected with it, nor any action taken to
10 carry out this Agreement by any of the Settling Plaintiffs or the Settling Toshiba Defendants shall
11 be referred to, offered into evidence or received in evidence in any pending or future civil,
12 criminal or administrative action or proceeding, except in a proceeding to enforce this Agreement,
13 or to defend against the assertion of Released Claims, or as otherwise required by law.
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16 C. Release, Discharge, and Covenant Not to Sue.

17 17. In addition to the effect of any final judgment entered in accordance with this
18 Agreement, upon this Agreement becoming final as set out in paragraph 15 of this Agreement,
19 and in consideration of payment of the Settlement Fund, and for other valuable consideration, the
20 Settling Toshiba Defendant Releasees shall be completely released, acquitted, and forever
21 discharged from any and all claims, demands, actions, suits, causes of action, whether class,
22 individual, or otherwise in nature (whether or not any Settling Plaintiff has objected to the
23 settlement or makes a claim upon or participates in the Settlement Fund), whether directly,
24 representatively, derivatively or in any other capacity, that Releasors, or each of them, ever had,
25 now has, or hereafter can, shall, or may have on account of, related to, or in any way arising out
26 of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries,
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1 damages, and the consequences thereof in any way arising out of or relating in any way to any act
2 or omission of the Settling Toshiba Defendant Releasees (or any of them) concerning the pricing,
3 production, development, or sale of DRAM products or products containing DRAM up to
4 December 31, 2002, including claims based on the conduct alleged and causes of action asserted
5 or that could have been asserted, in complaints filed in the Actions by the Settling Plaintiffs, or in
6 any similar action filed in any federal or state court, including, without limitation, any claims
7 arising under any federal or state antitrust, unjust enrichment, unfair competition, trade practice
8 statutory or common law, and consumer protection law (to the extent that a consumer protection
9 claim would be based on allegations of an antitrust or unfair competition violation) (the
10 "Released Claims"). For the avoidance of doubt, the Released Claims do not include any claims
11 relating to price-fixing, output limitation, bid-rigging, or market allocation on Cathode Ray Tubes
12 ("CRTs") or Liquid Crystal Displays ("LCDs"). Releasors shall not, after the date of this
13 Agreement, seek to establish liability against any Settling Toshiba Defendant Releasees based, in
14 whole or in part, upon any of the Released Claims, or conduct at issue in the Released Claims.
15 The Settling Parties contemplate and agree that this Agreement may be pleaded as a bar to a
16 lawsuit, and an injunction may be obtained, preventing any action from being initiated or
17 maintained in any case sought to be prosecuted on behalf of indirect DRAM purchasers with
18 respect to the claims released in this paragraph.
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22 18. In addition to the provisions of paragraph 17 of this Agreement, Releasors hereby
23 expressly waive and release, upon this Agreement becoming final, any and all provisions, rights,
24 and benefits conferred by § 1542 of the California Civil Code, which states:

25 CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A
26 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
27 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN
28 HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
2 THE DEBTOR;

3 or by any law of any state or territory of the United States, or principle of common law, which is
4 similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may
5 hereafter discover facts other than or different from those which he, she, or it knows or believes to
6 be true with respect to the claims which are the subject matter of the provisions of paragraph 17
7 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever
8 settles and releases, upon this Agreement becoming final, any known or unknown, suspected or
9 unsuspected, contingent or non-contingent claim with respect to the subject matter of the
10 provisions of paragraph 17 of this Agreement, whether or not concealed or hidden, without regard
11 to the subsequent discovery or existence of such different or additional facts.

12 19. The release, discharge, and covenant not to sue set forth in paragraph 17 of this
13 Agreement does not include claims by any of the Settling Plaintiffs other than the claims set forth
14 therein, such as those solely arising out of product liability or warranty claims in the ordinary
15 course of business.

16 20. The Settling Toshiba Defendants agree to cooperate with the Settling Plaintiffs by: (a)
17 meeting and conferring in good faith to attempt to reach agreement about making their
18 appropriate current employees available for deposition and trial according to a reasonable
19 schedule; (b) upon request, providing the last-known contact information for any potentially
20 relevant former employees; and (c) producing in person at trial, deposition, or by affidavit,
21 whichever is legally necessary, representatives to establish for admission into evidence the
22 amount of their respective relevant sales and to testify as to the genuineness, status as business
23 records, and authenticity of documents. Settling Toshiba Defendants represent that, upon request
24 by Settling Plaintiffs, and while being afforded a reasonable time to comply, they will produce
25 any documents and data previously produced to any United States grand jury which is
26 investigating or has investigated the DRAM price-fixing conspiracy in the Northern District of
27 California as well as any documents or data previously produced in any DRAM-related
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1 proceeding filed or consolidated in Judge Hamilton's court in the Northern District of California.
2 The cooperation obligations provided for in this paragraph 20 shall come into effect only if: (1)
3 the Settling Plaintiffs file a complaint that is not settled prior to the request for cooperation
4 against a current or former DRAM manufacturer other than the Settling Toshiba Defendants,
5 alleging price-fixing claims arising from the same purported conduct at issue in the Actions and
6 this Agreement has not been terminated as to the Settling Toshiba Defendants; or (2) any of the
7 Samsung, Winbond, Multi-Defendant or Nanya Settlement Agreements does not become final,
8 and litigation resumes as to one or more of those Defendants. Notwithstanding the foregoing, if
9 a case resulting from the occurrence of (1) or (2) proceeds to discovery, the cooperation
10 obligations provided for in this paragraph 20 shall not come into effect until 120 days before the
11 close of discovery; and, if a case resulting from the occurrence of (1) or (2) proceeds straight to
12 motion practice and/or trial, without discovery, there shall be no delay in the effective date of the
13 cooperation obligations provided for in this paragraph 20. In any event, the cooperation
14 obligations set forth in this paragraph will expire after three (3) years of the date of the execution
15 of this Agreement.

16 D. Settlement Amount

17 21. Subject to the provisions hereof, and in full, complete and final settlement of the
18 Actions as provided herein, the Settling Toshiba Defendants shall pay:

19 (a) \$7,250,000 in United States funds; and

20 (b) a deposit of \$200,000 for the Settling Toshiba Defendants' share of the costs of the
21 Special Master, notice,

22 and claims administration, as provided in paragraphs 13 and 26 of this Agreement. The Settling
23 Toshiba Defendants shall pay the amounts set forth in the foregoing subparagraphs (a) and (b)
24 above by wire transfer into the Settlement Fund Escrow Account (as provided in this Agreement
25 and/or by any subsequent Escrow Instructions agreed to by the Parties) within thirty (30) days
26 following receipt by the Settling Toshiba Defendants of final escrow instructions. The Settlement
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1 Fund shall be held by the Escrow Agent (and may be divided pursuant to the instructions in the
2 Escrow Agreement), pursuant to the agreement of the parties that 8/9ths of the Settlement Fund
3 shall be for the benefit of the Indirect Purchaser Plaintiffs and 1/9th of the Settlement Fund shall
4 be for the benefit of the Governmental Purchaser Plaintiffs, which amounts shall include any
5 allocated attorneys' fees. Any division of the Settlement Fund by the Escrow Agent into separate
6 funds, consistent with the Escrow Agreement, shall not affect those provisions of this Agreement
7 that are applicable to the Settlement Fund as a whole. The Settlement Fund shall also be
8 administered in accordance with the provisions of paragraph 23 of this Agreement (the "Escrow
9 Account(s)").
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12 22. If any State who is a plaintiff in *State of California et. al. v. Infineon Technologies et.*
13 *al.*, Case No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*,
14 Case No. C-06-6436 PJH (N.D. Cal.) or in the complaint to be filed against Settling Toshiba
15 Defendants contemporaneously with this Agreement by Plaintiff States, et al. does not accept the
16 terms of this Agreement and/or does not sign on to the Agreement within thirty (30) days of it
17 becoming executed (as defined in paragraph 15), it will be deemed to have rejected the
18 Agreement. In that case, or for any other reason that this Agreement does not become effective as
19 to any State who is a plaintiff in *State of California et. al. v. Infineon Technologies et. al.*, Case
20 No. C-06-4333 PJH (N.D. Cal.), *State of New York v. Micron Technology, Inc., et al.*, Case No.
21 C-06-6436 PJH (N.D. Cal.), or in the complaint to be filed against Settling Toshiba Defendants
22 contemporaneously with this Agreement by Plaintiff States, et al., 1/9th of each payment that is
23 for the benefit of the Governmental Purchaser Plaintiffs shall be reduced by a percentage equal to
24 any such rejecting State's share of that fund. Any such share shall be determined on the same
25 basis as that used for such allocation among the Governmental Purchaser Plaintiffs of the
26 proceeds of the Samsung, Winbond, Multi-Defendant and Nanya Settlement Agreements. If any
27 payments have been made for which a reduction is subsequently calculated pursuant to this
28 paragraph, the amount of the reduction for any such State's share (plus any accrued interest on

1 that share) shall be promptly refunded to the Settling Toshiba Defendants who have made such
2 payments, less the proportionate amount of expenses incurred for class notice, claims
3 administration, settlement administration, or for taxes, or any other expenses incurred by the
4 Settlement Fund as of that date.

5 23. Escrow Account(s).

6
7 (a) The Escrow Account referenced in paragraph 21 will be established at a bank to be
8 agreed by Settling Parties, with such bank serving as escrow agent ("Escrow Agent") subject to
9 escrow instructions as agreed by the Settling Parties. The separately executed Escrow Agreement
10 will require the Escrow Agent to (1) create and maintain any Settlement Fund in one or more
11 segregated trust accounts and (2) to maintain fiduciary insurance sufficient to protect against an
12 unforeseen loss of the Escrow Account. The Escrow Agent may establish, pursuant to the
13 instructions in the Escrow Agreement, one or more escrow accounts consistent with the
14 agreement of the parties that 8/9ths of the Settlement Fund shall be for the benefit of the Indirect
15 Purchaser Plaintiffs and 1/9th of the Settlement Fund shall be for the benefit of the Governmental
16 Purchaser Plaintiffs. Such Escrow Account or Accounts and any subsequently established escrow
17 accounts are to be administered under the Court's continuing supervision and control.
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20 (b) The Escrow Agent shall cause the funds deposited in the Escrow Account(s) to be
21 invested in instruments backed by the full faith and credit of the United States Government or
22 fully insured by the United States Government or an agency thereof, or money market funds
23 invested substantially in such instruments, and shall reinvest any income from these instruments
24 and the proceeds of these instruments as they mature in similar instruments at their then current
25 market rates.

26 (c) All funds held in the Escrow Account(s) shall be deemed and considered to be *in*
27 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such
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1 time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the
2 Court.

3 (d) The Settling Parties agree to treat the Settlement Fund as being at all times one or
4 more "qualified settlement funds" within the meaning of Treas. Reg. §1.468B-1 and to refrain
5 from taking any action inconsistent with such treatment.

6 (e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the
7 regulations promulgated thereunder, the "administrator" shall be the Escrow Agent for each
8 Escrow Account and shall promptly take all steps necessary so that the Settlement Fund qualifies
9 as one or more "qualified settlement funds" within the meaning of Treas. Reg. § 1.468B-1. These
10 steps include, without limitation, the following:

11 (i) the Escrow Agent shall timely and properly prepare a statement fulfilling
12 the requirements of Treas. Reg. § 1.468B-3(e) on behalf of the Settling Toshiba Defendants; and

13 (ii) the Escrow Agent shall timely and properly file all informational and
14 other tax returns necessary or advisable with respect to the Settlement Fund (including without
15 limitation the returns described in Treas. Reg. §1.468B-2(k)(1)). Such returns (as well as the
16 election described below) shall be consistent with the provisions of paragraph 23.

17
18 In addition to the above, the Escrow Agent shall timely make such elections as necessary or
19 advisable to carry out the provisions of paragraph 23. Without limiting the generality of the
20 foregoing, the Escrow Agent and the Settling Toshiba Defendants agree that they will jointly
21 make the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest
22 permitted date. All elections shall be made in compliance with the procedures and requirements
23 contained in the applicable Treasury regulations. It shall be the responsibility of the Escrow
24 Agent to timely and properly prepare and deliver the necessary documentation for signature by all
25 necessary parties, and thereafter to cause the appropriate filing to occur.
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1 (f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect
2 to the income earned by the Settlement Fund ("Taxes"), (ii) taxes, interest, penalties, or other tax
3 detriments that may be imposed upon Settling Toshiba Defendants or any other Settling Toshiba
4 Defendant Releasee with respect to (A) any income earned by the Settlement Fund or (B) the
5 receipt of any payment under this paragraph 23(f)(ii), in each case for any period during which
6 the Settlement Fund does not qualify as one or more "qualified settlement funds" for federal or
7 state income tax purposes ("Tax Detriments"); and (iii) expenses and costs incurred in connection
8 with the operation and implementation of paragraphs 23(d) through 23(f) (including, without
9 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and
10 expenses relating to filing (or failing to file) the returns described in paragraph 23(e) ("Tax
11 Expenses"), shall be paid out of the Settlement Fund.
12

13 (g) Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant
14 Releasee nor their respective counsel shall have any liability or responsibility for the Taxes, Tax
15 Detriments, or the Tax Expenses. Taxes, Tax Detriments, and Tax Expenses shall be timely paid
16 by the Escrow Agent out of the Settlement Fund without prior order from the Court and the
17 Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold
18 from distribution to any claimants authorized by the Court any funds necessary to pay such
19 amounts including the establishment of adequate reserves for any Taxes, Tax Detriments, and Tax
20 Expenses (as well as any amounts that may be required to be withheld under Treas. Reg.
21 §1.468B-2(1)(2)). Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant
22 Releasee is responsible nor shall they have any liability therefore. Settling Parties agree to
23 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent
24 reasonably necessary to carry out the provisions of paragraphs 23(d) through 23(g).
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1 (h) If this Agreement does not receive final Court approval, or if for any other reason this
2 Agreement terminates, then all amounts paid by Settling Toshiba Defendants into the Settlement
3 Fund shall be promptly returned to Settling Toshiba Defendants from the Escrow Account(s) by
4 the Escrow Agent along with any interest accrued thereon less the Settling Toshiba Defendants'
5 share of any expenses incurred prior to that date for taxes, class notice, claims administration, or
6 settlement administration or any other expenses incurred by the Settlement Fund.
7

8 24. Exclusions. Co-Lead Counsel, in conjunction with the settlement administrator, shall
9 cause copies of requests for exclusion from the settlement classes to be provided to counsel for
10 the Settling Toshiba Defendants as they are received. The Settling Plaintiffs may not exclude
11 themselves by filing such requests for exclusion as a group, but must in each instance individually
12 execute such notices. No later than ten (10) days after the final date for mailing requests for
13 exclusion, Co-Lead Counsel shall provide counsel for the Settling Toshiba Defendants with a
14 complete and final list of opt-outs. The proposed order contemplated by paragraphs 12 and 14 of
15 this Agreement shall allow the Settling Parties to seek discovery from opt-outs to obtain
16 information sufficient to calculate opt-out DRAM purchases.
17

18 25. Opt-Out Termination Rights. In the event that the Settling Toshiba Defendants
19 determine that valid and timely requests for exclusion have been made by multiple Settling
20 Plaintiffs such that they believe in good faith that there is a risk that they will be forced to defend
21 substantial litigation with respect to claims by opt-outs, they, in their discretion, acting in good
22 faith, and after meeting and conferring with Co-Lead Counsel, may elect to terminate this
23 Agreement by serving written notice of such election on Co-Lead Counsel by facsimile and
24 overnight courier and by filing a copy of such notice with the Court no later than the twentieth
25 day from the day on which the Settling Toshiba Defendants receive the final opt-out list. In the
26 event that one or more Settling Toshiba Defendants exercise their option to terminate this
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1 Agreement: (a) this Agreement shall be null and void, and shall have no force or effect and shall
2 be without prejudice to the rights and contentions of the Settling Toshiba Defendants, the Settling
3 Toshiba Defendant Releasees, and Settling Plaintiffs in this or any other litigation; and (b) the
4 Settlement Fund paid by the Settling Toshiba Defendants, plus interest thereon, shall be refunded
5 promptly to them, minus such Toshiba Settling Defendant's percentage (as set forth in this
6 Agreement) of expenses incurred for taxes, Special Master, class notice, claims administration, or
7 settlement administration costs or any other expenses incurred by the Settlement Fund, and the
8 Escrow Agent shall be promptly so notified and instructed.

10 26. Payment of Expenses. As set forth in Paragraph 21, the Settling Toshiba Defendants
11 agree to deposit in the Settlement Fund Escrow Account \$200,000 as an advance for their share of
12 the services of the Special Master, notice, and claims administration costs. After that deposit is
13 made, that portion of the Settlement Fund may be disbursed, with prior notice to counsel for
14 Toshiba, to satisfy the cost of coordinated proceedings before the Special Master, notice, and
15 claims administration, as provided in paragraph 13(b) and (c). After this Agreement becomes
16 final within the meaning of paragraph 15, all court ordered disbursements, including attorneys'
17 fees and litigation costs, may be made from the Settlement Fund. Other than as set forth in this
18 paragraph 26, neither Settling Toshiba Defendants nor any of the other Settling Toshiba
19 Defendant Releasees under this Agreement shall be liable for any of the costs or expenses of the
20 litigation of the Actions, including, without limitation, attorneys' fees, fees and expenses of
21 expert witnesses and consultants, and costs and expenses associated with discovery, motion
22 practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of
23 other settlements, or for costs of the Special Master, notice, and class administration. Pursuant to
24 paragraph 13(b), any portion of the Settling Toshiba Defendants' payment of expenses not
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1 actually used to pay costs of the Special Master, notice, and administration shall be refunded to
2 the Settling Toshiba Defendants.

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4 E. The Settlement Fund

5 27. Except as expressly provided in paragraphs 13 and 26 of this Agreement with respect
6 to Toshiba's payment of notice and claims administration costs, Releasors shall look solely to the
7 Settlement Fund for settlement and satisfaction against the Settling Toshiba Defendant Releasees
8 of all Released Claims, and shall have no other recovery against the Settling Toshiba Defendants
9 or any other Settling Toshiba Defendant Releasee.

10 28. After this Agreement becomes final within the meaning of paragraph 15, the
11 Settlement Fund shall be distributed in accordance with plans for direct distributions, *cy pres*, or
12 as otherwise permitted by law, all to be submitted at the appropriate time by the Settling Plaintiffs
13 and (following a report and recommendation by the Special Master) approved by the Court.
14 Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee under
15 this Agreement shall have any responsibility for, or interest in, or liability whatsoever with
16 respect to, or shall file any opposition to, the proposed or actual plan(s) for distribution of the
17 Settlement Fund among the Settling Plaintiffs and/or any other person or entity who may assert
18 some claim to the Settlement Fund.
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21 29. It is contemplated that Settling Plaintiffs' counsel will seek attorneys' fees award(s)
22 and reimbursement of costs and expenses (including expert witness fees and expenses) from the
23 Settlement Fund. It is further contemplated that counsel for the Indirect Purchaser Plaintiffs may
24 seek class representative incentive awards in amounts to be approved by the Court. The Indirect
25 Purchaser Plaintiffs and their counsel reserve all rights regarding the propriety of any request for
26 or award of attorneys' fees or reimbursement of costs and expenses to the Attorneys General
27 and/or their counsel. The Attorneys General reserve all rights regarding the propriety of any
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1 request for or award of attorneys' fees, reimbursement of costs and expenses or any class
2 representative incentive awards to Indirect Purchaser Plaintiffs and/or their counsel. Settling
3 Toshiba Defendants shall take no position on any application for attorneys' fees, reimbursement
4 of costs and expenses or class representative incentive awards. After the entry of any order
5 awarding attorneys' fees, reimbursement of costs and expenses or class representative incentive
6 awards, the Escrow Agent may, pursuant to paragraph 23, establish and maintain sub-accounts to
7 hold such awards for: (1) counsel for the Indirect Purchaser Plaintiffs; (2) Attorney(s) General or
8 their counsel; and (3) for class representative incentive awards. Subject to the foregoing
9 reservation of rights, and subject to Court approval, any amounts awarded or distributed by the
10 Court to counsel for the Attorneys General may be used for any of the following purposes, within
11 the limits of applicable law:

12 (a) Reimbursement of attorneys' fees and expenses incurred in the prosecution of
13 the Actions;

14 (b) Deposit into a state antitrust or consumer protection account (e.g., revolving
15 account, trust account) for use in accordance with the laws governing the account;

16 (c) Deposit into a fund exclusively dedicated to assisting the state Attorneys
17 General to defray the costs of experts, economists and consultants in multistate antitrust
18 investigations and litigations; or

19 (d) Antitrust or consumer protection enforcement by the Attorney General of such
20 State.

21 30. The procedure for and the allowance or disallowance by the Court of the petitions for
22 awards of attorneys' fees and the reimbursement of costs and expenses is to be considered by the
23 Court separately from the Court's consideration of the fairness, reasonableness and adequacy of
24 this Agreement, and any order or proceeding relating to the fee application(s) or any appeal from
25 any such order shall not operate to terminate or cancel this Agreement, or affect or delay the
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1 finality of the Judgment approving the settlement. Except as expressly provided in this
2 Agreement, no Settling Toshiba Defendant or any other Settling Toshiba Defendant Releasee
3 under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with
4 respect to any payment to counsel for the Settling Plaintiffs of any fee award in the Actions.
5 Neither Settling Toshiba Defendants nor any other Settling Toshiba Defendant Releasee under
6 this Agreement shall have any responsibility for, or interest in, or liability whatsoever with
7 respect to the allocation among counsel for the Settling Plaintiffs, and/or any other person or
8 entity who may assert some claim thereto, of any fee award that the Court may make in the
9 Actions.
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11 F. Rescission if the Agreement is Not Approved or Final Judgment is
12 Not Entered

13 31. If the Court refuses to approve this Agreement or any material part hereof, or if such
14 approval is materially modified or set aside on appeal, or if the Court does not enter the final
15 judgment provided for in paragraph 14 of this Agreement, or if the Court enters the final
16 judgment and appellate review is sought, and on such review, such final judgment is not affirmed
17 in its entirety, then Settling Toshiba Defendants and the Settling Plaintiffs shall each, in their sole
18 discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise
19 of any such right to rescind shall be made according to the terms of paragraph 25 within thirty
20 (30) days of the event triggering the right to rescind. A modification or reversal on appeal of any
21 amount of the fees for counsel for the Settling Plaintiffs shall not be deemed a modification of all
22 or a part of the terms of this Agreement or such final judgment.

23 32. In the event that this Agreement does not become final, then this Agreement shall be
24 of no force or effect (except for this paragraph and paragraph 16) and any and all parts of the
25 Settlement Fund caused to be deposited in the Escrow Account(s), including all interest earned on
26 such accounts, shall be returned forthwith to the Settling Toshiba Defendants less only
27 disbursements made in accordance with this Agreement. The Settling Parties expressly reserve
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1 all of their rights if this Agreement does not become final. Further, and in any event, the Settling
2 Parties agree that this Agreement, whether or not it shall become final, and any and all
3 negotiations, documents, and discussions associated with its negotiation, shall not be deemed or
4 construed to be an admission or evidence of any violation of any statute or law or of any liability
5 or wrongdoing by the Settling Toshiba Defendants or the Settling Toshiba Defendant Releasees,
6 or of the truth of any of the claims or allegations contained in the complaints or any other
7 pleadings filed by the Settling Plaintiffs in the Actions, and evidence thereof shall not be
8 discoverable or used directly or indirectly, in any way, whether in the Actions or in any other
9 action or proceeding.
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12 33. This Agreement shall be construed and interpreted to effectuate the intent of the
13 Settling Parties, which is to provide, through this Agreement, for a complete resolution of the
14 relevant claims with respect to each Settling Toshiba Defendant Releasee as provided in this
15 Agreement.

16 34. The Parties to this Agreement contemplate and agree that, prior to final approval of
17 the Settlement as provided for in paragraph 15 of this Agreement, appropriate notice (1) of the
18 Settlement; (2) of a hearing at which the Court will consider the approval of the Agreement; (3)
19 that Settling Plaintiffs may be permitted to exclude themselves from the Settlement; and (4) that
20 Settling Plaintiffs' counsel have filed a petition to be awarded attorneys' fees, will be given to the
21 Settling Plaintiffs.

22 G. Miscellaneous

23 35. This Agreement does not settle or compromise any claim by the Settling Plaintiffs
24 against any defendant or alleged co-conspirator other than the Settling Toshiba Defendants and
25 the Settling Toshiba Defendant Releasees. All rights against such other defendants or alleged co-
26 conspirators are specifically reserved by Settling Plaintiffs.

27 36. Neither this Agreement, nor any act performed or document executed pursuant to or
28 in furtherance of this Agreement is or may be deemed to be or may be used as an admission of, or

1 evidence of, (i) the validity of any claim or defense; or (ii) the appropriateness or
2 inappropriateness of any class or other representational capacity whether contemporaneously with
3 this Agreement or at any time in the future.

4 37. Except as otherwise set forth herein, this Agreement shall not affect whatever rights
5 Releasors or any of them may have: (i) to participate in or benefit from, where appropriate, any
6 relief or other recovery as part of a settlement or judgment in any action on behalf of any direct
7 purchasers of DRAM; (ii) to participate in or benefit from any relief or recovery as part of a
8 judgment or settlement in these Actions against any other party named as a defendant (other than
9 the Settling Toshiba Defendants or a Settling Toshiba Defendant Releasee); or (iii) to assert any
10 claims that are not released in this Agreement.

11 38. The United States District Court for the Northern District of California shall retain
12 jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall
13 have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating
14 to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation
15 and agreement by the Settling Parties. This Agreement shall be construed according to the laws
16 of the State of California without regard to its choice of law or conflict of laws principles.

17 39. This Agreement constitutes the entire, complete and integrated agreement between
18 the Settling Parties pertaining to the settlement of the Actions against the Settling Toshiba
19 Defendants, and supersedes all prior and contemporaneous undertakings of the Settling Parties in
20 connection herewith. This Agreement may not be modified or amended except in writing
21 executed by the Settling Parties, and approved by the Court.

22 40. This Agreement shall be binding upon, and inure to the benefit of, the successors and
23 assigns of the Settling Parties. Without limiting the generality of the foregoing, each and every
24 covenant and agreement made herein by the Settling Plaintiffs shall be binding upon all classes
25 and Releasors. The Settling Toshiba Defendant Releasees (other than the Settling Toshiba
26 Defendants, which are parties hereto) are third party beneficiaries of this Agreement and are
27 authorized to enforce its terms applicable to them.
28

1 41. This Agreement may be executed in counterparts by the Settling Plaintiffs and the
2 Settling Toshiba Defendants, and a facsimile signature shall be deemed an original signature for
3 purposes of executing this Agreement.

4 42. Neither the Settling Plaintiffs nor the Settling Toshiba Defendants shall be considered
5 to be the drafters of this Agreement or any of its provisions for the purpose of any statute, case
6 law, or rule of interpretation or construction that would or might cause any provision to be
7 construed against the drafter of this Agreement.

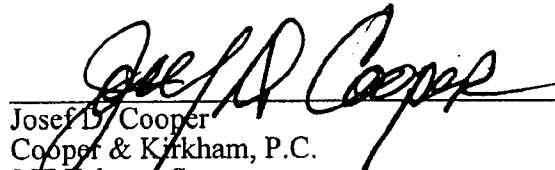
8 43. The descriptive headings of any paragraphs or sections of this Agreement are inserted
9 for convenience only and do not constitute a part of this Agreement.

10 44. Where this Agreement requires either party to provide notice or any other
11 communication or document to the other, such notice shall be in writing, and such notice,
12 communication, or document shall be provided by facsimile or letter by overnight delivery to the
13 undersigned counsel of record for the party to whom notice is being provided.

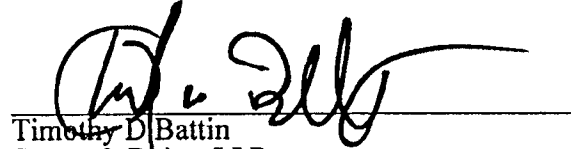
14 45. Each party and their counsel agree to do anything reasonably necessary to effectuate
15 the performance of, and uphold the validity and enforceability of, this Agreement.

16 46. Each of the undersigned attorneys represents that he or she is fully authorized to enter
17 into the terms and conditions of, and to execute, this Agreement on behalf of the Settling Parties
18 he or she represents, subject to Court approval.

19
20
21 Dated: 8/22/12


Joseph D. Cooper
Cooper & Kirkham, P.C.
357 Tehama Street
San Francisco, CA 94103-4192


22
23
24 Dated: 8/22/12


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Dated: _____

8/21/12



Daniel E. Gustafson
Gustafson Gluek PLLC
650 Northstar East
608 Second Avenue South
Minneapolis, MN 55402

Dated: _____

Daniel J. Mogin
The Mogin Law Firm, P.C.
110 Juniper Street
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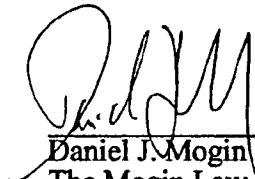
**Co-Lead Counsel and Attorneys for Indirect
Purchaser Plaintiffs**

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Dated: _____

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Dated: 27 Aug 2012


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**Co-Lead Counsel and Attorneys for Indirect
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TOSHIBA CORPORATION

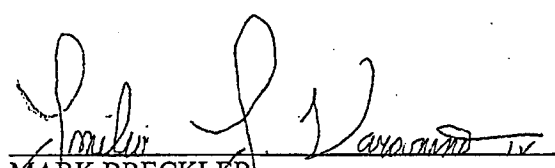
Dated: _____ By: *Yasuo Noruke*

TOSHIBA AMERICA ELECTRONIC
COMPONENTS, INC.

Dated: 9/21/2012 By: *[Signature]*

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Dated: 10/1/2012



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Dated: 8/22/2012



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1
2
3 Dated: September 4, 2012
4

5 SCOTT HEMPHILL
6 Bureau Chief

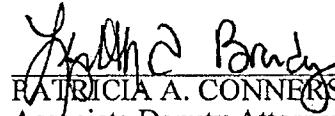
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8 Assistant Attorney General
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12 New York, NY 10271
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15 Attorney General of the State of New
16 York

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18 New York
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1
2 Dated: August 30 2012

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Attorney General of the State of Florida

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7 Antitrust Unit Chief
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Dated: _____

DUSTIN MCDANIEL
Attorney General of Arkansas

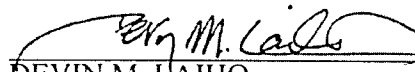
By: 

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1
2 Dated: Sept 7, 2012

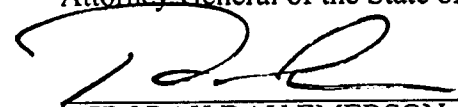
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Dated: 8/29/12

DAVID M. LOUIE
Attorney General of the State of Hawaii

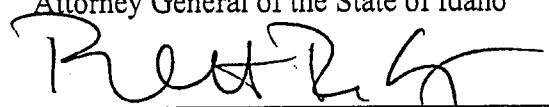


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Dated: 8/23/12

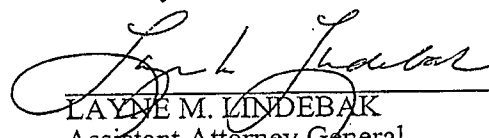
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2 Dated: August 22, 2012
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Dated: 9-12-12

JAMES D. "BUDDY" CALDWELL
Attorney General of the State of Louisiana

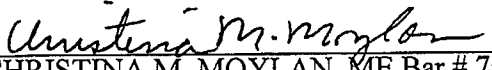
Stacie L. Deblieux

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Dated: 8-22-12


WILLIAM J. SCHNEIDER
Attorney General of the State of Maine

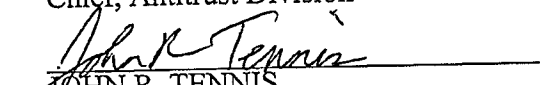

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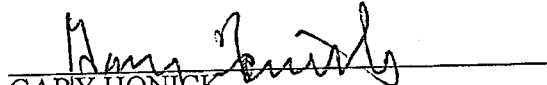
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Dated: August 21, 2012

DOUGLAS F. GANSLER
Attorney General of the State of Maryland


ELLEN S. COOPER
Assistant Attorney General
Chief, Antitrust Division

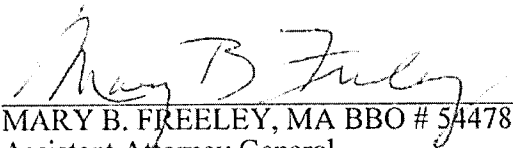

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Dated: August 31, 2012

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Dated: 8/22/12

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Dated: 8/22/12

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Dated: 8/22/12

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Dated: 8-22-2012

JON BRUNING
Attorney General of the State of Nebraska

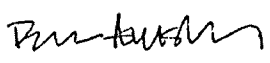


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August 31, 2012
Dated: _____

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada
ERIC WITKOSKI
Chief Deputy Attorney General
Consumer Advocate

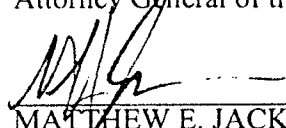


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Dated: August 30, 2012

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Dated: 8/31/12

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Dated: August 23, 2012

WAYNE STENEHJEM
Attorney General of the State of North
Dakota

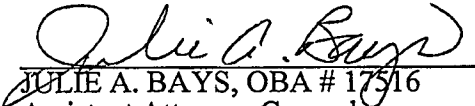


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Dated: 8-21-2012


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Dated: 8/21/12

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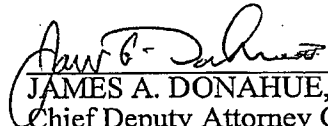
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Dated: 8/21/2012

LINDA KELLY, Attorney General of the
Commonwealth of Pennsylvania

WILLIAM V. CONLEY
First Deputy Attorney General

ALEXIS L. BARBIERI
Executive Deputy Attorney General
Public Protection Division

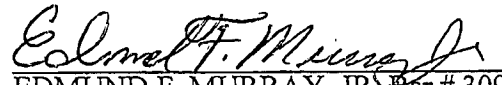


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Dated: August 21, 2012

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Dated: 8/24/12

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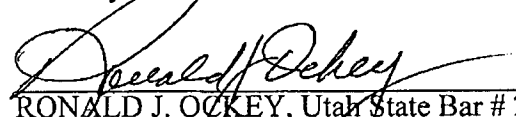


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Dated: 8/22/12

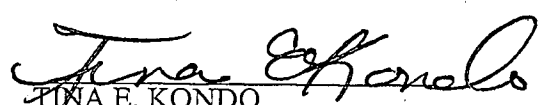
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Dated: August 21, 2012

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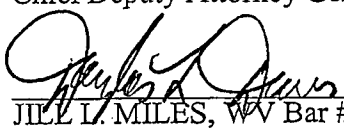


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Dated: August 22, 2012


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